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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

2012 JUN 29 PM 3: 27

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 6438

DATE COMPLAINT FILED: December 6, 2010

DATE OF NOTIFICATION: December 13, 2010

LAST RESPONSE RECEIVED: February 11, 2011

DATE ACTIVATED: March 8, 2011

EXPIRATION OF SOL:

March 1, 2015 (earliest)

October 28, 2015 (latest)

COMPLAINANT:

Democratic Party of Oregon

RESPONDENTS:

Arthur B. Robinson

Art Robinson for Congress and Noah Robinson, in his
official capacity as treasurer

Althouse Press

Access to Energy

Oregon Institute for Science and Medicine

Robinson Curriculum

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. §§ 431(1), (11), (13)

2 U.S.C. § 434(b)(3)(A)

2 U.S.C. §§ 441a(a), (f)

2 U.S.C. § 441b

2 U.S.C. § 441d

11 C.F.R. § 100.2(c)

11 C.F.R. § 104.7

11 C.F.R. § 110.6(c)

11 C.F.R. § 110.11

11 C.F.R. § 114.2(f)

Or. Rev. Stat. § 248.009

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED:

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I. INTRODUCTION

Arthur B. Robinson was a candidate in Oregon's 4th Congressional District in the 2010 election. Robinson won the nominations of the Republican Party, the Independent Party of Oregon, and the Constitution Party, and lost in the general election. Before and during his candidacy, he published a home schooling program called "the Robinson Curriculum" and a periodical about energy issues called "Access to Energy." He conducted his businesses under the names Althouse Press and the Oregon Institute for Science and Medicine (the "Oregon Institute").

The Complaint in this matter alleges that: (1) Robinson's principal campaign committee, Art Robinson for Congress (the "Committee"), received \$70,550 in excessive contributions; (2) Robinson's businesses made, and the Committee received, corporate contributions, and the Committee failed to properly disclose support from his businesses as in-kind contributions; (3) Robinson's businesses may have been conduits of earmarked contributions but neither his businesses nor the Committee filed conduit reports; (4) the Committee failed to disclose contributor information and did not make best efforts to do so; and (5) Robinson and his businesses violated the Act's disclaimer provisions. Respondents filed a joint Response that denied the allegations, or contended that the Commission should dismiss this matter.

For the reasons stated below, we recommend that the Commission find no reason to believe or dismiss the allegations against Respondents, and close the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Alleged Receipt of Excessive Primary Contributions

A novel issue raised in this matter is whether, under the Act and Commission regulations, the Committee was entitled to accept contributions under separate \$2,400 limits for the May 18, 2010, state-administered Republican Party primary election and the July 8-31, 2010, Independent Party of Oregon ("IPO") self-administered Internet primary election.¹ The Commission has not previously addressed squarely whether a candidate's committee may accept separate primary election contributions up to the limit for different parties' primaries when those primaries take place on different dates before the general election.²

The Complaint alleges that the Committee was not entitled to separate limits for the Republican and IPO primaries and, as a result of persons contributing to the Committee for both primary elections, the Committee accepted a total of \$70,550 in excessive contributions.³ See Compl. at 3; *id.*, Attach. I. The Complaint argues that the Commission has not permitted

¹ The Complaint did not allege, and the available information does not suggest, that the Committee accepted contributions toward an additional contribution limit in connection with Robinson's bid for the nomination of the Constitution party, which selected its nominee through a nominating convention held on June 27, 2010.

² Before the IPO completed its primary, the Committee was in communication with RAD about whether the Commission would treat the IPO primary as an election that would entitle the Committee to an additional contribution limit, but was told that the Commission had not decided the issue.

The Commission did not make any determination regarding this issue, and RAD duly warned the Committee that the Commission did not decide the issue.

³ This total includes contributions from nineteen different donors in excess of the applicable per-election contribution limit and twelve primary election contributions accepted after the GOP primary but before the IPO primary that exceeded \$2,400 and with no indication that those contributions were designated to retire the Committee's GOP primary debt. See Compl. at 3.

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1 separate limits for multiple party primaries. Compl. at 3-4 (citing Advisory Op. 1994-29 (Levy)
2 ("AO 1994-29") and AO 1982-47 (Sullivan) ("AO 1982-47")). The Complaint also contends
3 that, even if separate limits were permitted, the Committee accepted excessive contributions
4 because four contributors donated in excess of \$2,400 per election after the Independent Party's
5 primary. Compl. at 3-4; *id.*, n.3.

6 In response, the Committee asserts that it was entitled to a separate contribution limit for
7 the IPO primary pursuant to the Act and the Commission's regulations, which permit separate
8 contribution limits for each election and define elections to include primary elections. *See Resp.*
9 at 2-3, 6, 7-10. Respondents also note that the Commission has permitted candidates to receive
10 more than one contribution limit for their party's nomination process in addition to a general
11 election limit. *See Resp.* at 7-10 (citing Advisory Op. 2004-20 (Farrell for Congress) ("AO
12 2004-20") and Advisory Op. 1978-30 (Firmage for Congress) ("AO 1978-30")).⁴

13 1. Under the Plain Language of the Act and the Commission's Regulations,
14 the IPO Internet Primary Was a Primary Election

15 The Federal Election Campaign Act of 1971, as amended, (the "Act") provides that "no
16 person shall make contributions . . . to any candidate and his authorized political committees
17 with respect to *any election* for Federal office which, in the aggregate, exceed [\$2,400,]"
18 2 U.S.C. § 441a(a)(1)(A), and that no candidate or political committee shall knowingly accept an
19 excessive contribution. *See* 2 U.S.C. § 441a(f) (emphasis added). The Act's definition of
20 "election" includes: "(A) a general, special, primary, or runoff election; (B) a convention or
21 caucus of a political party[;]" and "(C) a primary election held for the selection of delegates . . .

⁴ The Committee notes that it sought guidance from the Commission in June 2010 about this issue and that it interpreted the Commission's Reports Analysis Division ("RAD") response as authorizing it to receive contributions under a separate contribution limit for the IPO primary. *See id.* at 9. RAD communication logs do not support the Committee's interpretation of RAD's advice.

1 of a political party[.]” 2 U.S.C. § 431(1)(A)-(C). The Commission’s regulations define a
2 primary election as, among other things, “an election which is held prior to a general election, as
3 a direct result of which candidates are nominated, in accordance with applicable state law, for
4 election to Federal office in a subsequent election.” 11 C.F.R. § 100.2(c)(1). The Commission
5 has also stated in Advisory Opinions that it determines whether a particular event is an election
6 based on analysis of relevant state law.⁵ See, e.g., AO 2004-20; Advisory Op. 1992-25 (Owens
7 for Senate Comm.).

8 Oregon law permits minor political parties to nominate candidates for public office.
9 See Or. Rev. Stat. § 248.009. The relevant Oregon statute requires that: (1) a minor political
10 party file its organizational documents with the state; (2) the nominating process provide an
11 equal opportunity for all registered members of a party within the electoral district to participate
12 in the nomination process or selection of delegates who will make the nomination; and (3) the
13 party nominate candidates in accordance with the procedures in its organizational documents.
14 *Id.*

15 According to the IPO by-laws on file with the Oregon Secretary of State, the IPO Caucus
16 has the authority to nominate candidates and it may choose to delegate that authority to “[a]ll
17 members eligible to vote for the candidate through vote-by-mail or other means.” See IPO By
18 Laws at Article V.D.2.4 (March 1, 2010), available at
19 http://www.sos.state.or.us/elections/doc/cand/bylaws_ind.pdf. Therefore, the IPO had the
20 authority as a matter of Oregon state law to nominate candidates for election to federal office
21 based on a vote of its members conducted over the Internet. And, as a consequence, the IPO

⁵ The fact that the IPO conducted its primary over the Internet does not affect the analysis because, as noted above, the Act does not limit the definition of an election to state-administered ballot box elections; for example, it includes in the definition of “election” such events as political party conventions and caucuses so long as the convention or caucus has the authority to nominate the party’s candidate. See 2 U.S.C. § 431(1)(B)-(D).

Internet primary election satisfies the definition of an election under 2 U.S.C. § 431(1)(A) and 11 C.F.R. § 100.2(c).

2. The Committee Was Entitled to a Second Limit for the IPO Primary

Neither the Act nor the Commission regulations place a limit on the number of pre-general elections for which candidates may receive contributions. Nor does the Act specify that a primary election of a minor party does not qualify for a separate contribution limit. And finally, the Act and the Commission's regulations do not indicate that a party's nomination process that satisfies the definition of "election" may be deemed an election for some candidates (those who have not yet secured a major party nomination) and not for others (those who have already secured a major party nomination).

The Complainant contends that the Committee was not entitled to a separate contribution limit for the IPO primary because the Commission has stated in Advisory Opinions that candidates competing in more than one party's primary that take place on the *same day*, so called "fusion elections," are not entitled to separate contributions limits for each primary election. Compl. at 3-4 (citing AO 1982-47, AO 1994-29).

In AO 1982-47, the Commission noted that the three party primaries at issue constituted a single election because they occurred on the same day. AO 1982-47 at 2. The Commission further reasoned in AO 1994-29 that candidates "generally" participated in only two elections, one primary and one general election, and that minor parties do not "usually" have primary elections. AO 1994-29 at 2. The Commission concluded that its regulations were designed "to equalize treatment, as much as possible, among major party candidates, minor party candidates, and independents with respect to the availability of contribution limits." *Id.* The Commission appears to have perceived the request by a major party candidate to have a third limit to seek the

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1 nomination of a minor party, through a primary occurring on the same day as the major party's
2 primary, as a breach of this "equalization" rationale: "The purpose [of the Commission's
3 regulations] is not to expand contribution limit opportunities for major party candidates seeking
4 more than one party's nomination." *Id.*

5 The Advisory Opinions that advised committees that they could not accept contributions
6 for both a major and minor party primary that occurred on the same day neither provide a shield
7 to enforcement (because the Commission did not permit the requested activity) nor do they
8 establish a rule of law. *See* 2 U.S.C. § 437f(b)-(c). They do not compel the result that
9 Complainant seeks. First, the cited Advisory Opinions address multiple limits for multiple party
10 primaries that took place on the same day, unlike here. Second, these Advisory Opinions, which
11 indicate that candidates may only receive two limits per election, are in tension with other
12 Advisory Opinions in which the Commission has approved a candidate's receipt of more than
13 one primary contribution limit. *See* AO 2004-20; AO 1978-30; Advisory Op. 1976-58 (Peterson
14 for Congress). Third, and most fundamentally, Complainant's argument is foreclosed by the
15 plain language of the Act and Commission regulations, which on their face place no limit on the
16 number of "elections" eligible for separate contributions limits. Thus, because, under the Act
17 and Commission regulations, the IPO and Republican Party primaries were separate "elections,"
18 the Committee was entitled to receive a separate contribution limit for each of them and the
19 Committee did not accept excessive contributions by accepting additional primary contributions
20 for the IPO primary. Accordingly, we recommend that the Commission find no reason to believe
21 that the Committee knowingly accepted excessive contributions in violation of 2 U.S.C.
22 § 441a(f) by accepting additional primary contributions for the IPO primary.

B. Alleged Receipt of Other Excessive Contributions

The Complaint separately asserts that the Committee accepted excessive contributions because it accepted contributions that exceeded \$2,400 from four contributors (Lawson, Unthank, Naser, and Tomkins) after the date of the IPO and Constitution Party primaries. Compl. at 4.

Respondents concede that they received these four excessive contributions. Resp. at 10. Respondents note, however, that: (a) Lawson's \$2,400 excessive contribution was refunded before the Complaint was filed; (b) Unthank and Naser's \$2,400 excessive contributions were the result of inaccurately attributing the contributions to them instead of their spouses and the contributions have now been correctly attributed to their spouses; and (c) the excessive portion of the Tomkins contribution, \$600, has also been refunded. *See id.*; *id.*, Exh. 4-5 (copies of the Committee disclosure reports indicating a refund and reattributions); the Committee's April 2011 Quarterly Report (refund).

In view of the limited number and amount of excessive contributions at issue and the Committee's corrective actions, we recommend that the Commission dismiss the allegation that the Committee violated 2 U.S.C. § 441a(f) by accepting the contributions identified above from these four contributors. *See Heckler v. Cheney*, 470 U.S. 821 (1985).

C. Alleged Corporate Contributions

Corporations are prohibited from making contributions to candidates, including by facilitating the making of contributions to candidates, that is, using corporate resources or facilities to engage in fundraising activities in connection with any federal election. *See* 2 U.S.C. § 441b; 11 C.F.R. § 114.2(f). The Complaint alleges that Robinson may have received prohibited corporate contributions from Althouse Press or the Oregon Institute and that his

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businesses may have facilitated the making of contributions to the Committee in violation of the Commission's regulations. Compl. at 4-5.

This aspect of the Complaint in essence stems from two campaign newsletters mailed by Robinson, for which the Committee disclosed a \$3,303.00 in-kind contribution from Robinson to his campaign, described as "Newsletter Expenses." Compl. at 4. The Complaint alleges that Robinson "may have still received an illegal corporate contribution" because the "facts suggest that some combination of Althouse [Press] and the [Oregon] institute paid to produce the newsletter and own the mailing list to the newsletter." *Id.* The Complaint further contends that the "cost of printing and mailing two 4-5 page newsletters, plus the cost of renting the list from the list owner, is likely in excess of \$3,303.00" and, "if these excess costs were paid for by a corporate entity, [Robinson] received an illegal corporate contribution." *Id.* In particular, the Complaint asserts that a fundraising letter, sent on September 5, 2010, would have involved corporate facilitation if a corporate entity owned the mailing list. *Id.* at 4-5. The Complaint further alleges that the Committee sent a fundraising e-mail to the Robinson Curriculum e-mail list on October 28, 2010, noting that the Robinson Curriculum "is not an entity registered with any state" and "there is evidence that it is owned and controlled by [the Oregon Institute]." *Id.* at 5. The Complaint surmised that there may be "tens of thousands" of names on the e-mail distribution list because Robinson's biography states that "over 60,000 children" have been taught using his curriculum and, therefore, "[a]ssuming that its list is owned by an incorporated entity . . . [the Committee's] unpaid use of the e-mail list is illegal corporate facilitation." *Id.*

In response, the Committee asserts that the allegation that their use of the Access to Energy and Robinson Curriculum subscriber lists for fundraising constituted illegal corporate contributions is speculation. Resp. at 3. The Committee also points out that Althouse Press is

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1 not a corporation but rather is a fictitious business name used by Robinson and is registered with
2 the Oregon Secretary of State as an assumed business name.⁶ *Id.* at 3, 11. The Oregon Institute
3 is a Section 501(c)(3) non-profit research institute that Robinson formed to conduct scientific
4 research. *Id.* at 5. Regardless, Respondents assert that the mailing lists at issue were owned by
5 the candidate himself and therefore were not contributed to the Committee by either Althouse
6 Press or the Oregon Institute. *Id.* at 3, 11. Respondents further represent that the Committee
7 rented 3,278 e-mail addresses from Robinson's personal list and paid the candidate four cents per
8 e-mail address. *Id.* at 11-12. The total payment for the 3,278 e-mail addresses was less than
9 \$200 and therefore was not itemized on the Committee's disclosure reports. *Id.* at 11.

10 There is no record evidence to support Complainant's allegations. Rather, the allegations
11 appear to be speculative.⁷ In response to these speculative allegations, Respondents contend that
12 Robinson owned the distribution lists and note that he disclosed a value for his campaign's use of
13 those lists as an in-kind contribution. Additionally, Althouse Press and Access to Energy are not
14 corporations. Accordingly, we recommend that the Commission find no reason to believe that
15 the Committee knowingly accepted corporate contributions in violation of 2 U.S.C. § 441b, and
16 find no reason to believe that Althouse Press, the Oregon Institute or the Robinson Curriculum
17 made corporate contributions in violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.2(f).

⁶ We confirmed that Althouse Press is registered in Oregon as an assumed business name and that Robinson is both the registrant and its authorized representative.

⁷ Indeed, the Complaint itself frames the allegation as a series of hypothetical or unanswered questions. The allegation is essentially that, despite Robinson disclosing his own \$3,303.00 in-kind contribution to his campaign for "Newsletter Expenses," "he may have" received an illegal corporate contribution because the newsletter expenses were "likely in excess of \$3,303.00" and "If these excess costs were paid for by a corporate entity, he received an illegal contribution." Compl. at 4.

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D. Allegedly Misreported Conduit Contributions

Robinson is the author of a periodic newsletter entitled "Access to Energy" in which he discusses issues relating to energy policy. In March 2010, Robinson distributed an Access to Energy newsletter that solicited contributions to the Committee and asked that those contributions be sent to the Access to Energy Post Office ("P.O.") box. *See* Compl. at 5 and Attach. A. The Complaint asserts that if any contributions were sent to Access for Energy in response to the solicitation, one of Robinson's businesses should have filed conduit reports and the Committee should have identified the contributions as earmarked. *Id.* The Complaint asks that the Commission investigate whether Robinson received "misreported conduit contributions," and whether the conduits were corporate entities that violated the prohibition on corporations acting as conduits or intermediaries. *Id.* at 5. Respondents contend that there were no earmarked contributions and that the allegation is based solely on the use of a P.O. box that Access to Energy shared with the Committee, which is permissible. Resp. at 12.

The Act and Commission regulations require that intermediaries or conduits who handle earmarked contributions report the original source and the intended recipient of the earmarked contributions to the Commission and to the intended recipient. 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 110.6(c)(1). The Commission's regulations also require candidates and committees to report certain information about conduits and intermediaries and the earmarked contributions. 11 C.F.R. § 110.6(c)(2). Individuals expressly authorized by the candidate to engage in fundraising shall not be considered to be conduits or intermediaries. 11 C.F.R. § 110.6(b)(1)(E). The candidate is necessarily excluded from the definition of a conduit or intermediary.

The Complaint has neither identified contributions that were earmarked and handled by conduits nor identified corporations that acted as conduits. Rather, the available information

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1 indicates that Access to Energy and Althouse Press are not corporations and have no employees
2 other than Robinson. Resp. at 5. Access to Energy is a monthly science and engineering
3 newsletter that Robinson writes and publishes through Althouse Press and distributes to 3,500
4 subscribers. *Id.* Respondents explain that Robinson, the Committee, Access to Energy, and
5 Althouse Press share a common P.O. box and that Access to Energy and Althouse Press are not
6 businesses but rather alter egos of Robinson. *Id.* at 5, 12. Because Robinson is the only
7 employee of these entities and their alter ego, any contributions for the Committee addressed to
8 Access to Energy or Althouse Press, would have been transmitted by Robinson to the
9 Committee.

10 As noted above, the Commission's regulations exclude the candidate from the
11 definition of a conduit or intermediary. See 11 C.F.R. § 110.6(b)(1)(E). Therefore, we
12 recommend that the Commission find no reason to believe that the Committee failed to disclose
13 earmarked contributions in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c), and find
14 no reason to believe that Althouse Press and Access to Energy failed to disclose earmarked
15 contributions in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

16 **E. Disclosure of Contributor Information and the Committee's Best Efforts**

17
18 The Complaint alleges that the Committee violated the Act's disclosure requirements by
19 failing to identify the employer and occupation of "as many as" 30.1 percent of the individual
20 contributors. Compl. at 6. This figure includes contributors whose employer and occupation
21 were disclosed by the Committee as "none." See *id.*

22 Below is a chart reflecting the contributions disclosed in the Committee's reports that
23 lacked employer and occupation information, including those contributors for which the

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- 1 description was "none" or "best efforts." We have omitted from the totals those contributions
- 2 that were from Robinson and from other committees.

Report	Total \$ Amt. and % of Contributions Lacking Emp/Occ Info	Total No. and % of Contributors Lacking Emp/Occ Info
2010 April Quarterly	\$0 / \$15,000 (0%)	0 / 10 (0%)
2010 Pre- Primary	\$55,600 / \$128,004 (43%)	86 / 179 (48.0%)
2010 July Quarterly	\$14,582 / \$117,996 (12.4%)	19 / 181 (10.5%)
2010 October Quarterly	\$46,819 / \$376,761 (12.4%)	70 / 601 (11.6%)
2010 Post General	\$18,101 / \$149,099 (12.1%)	38 / 401 (9.5%)
2010 Year End	\$0 / \$4,800 (0%)	0 / 2 (0%)
2011 April Quarterly	\$225 / \$6,575 (3.4%)	2 / 11 (18.2%)
2011 July Quarterly	\$3,000 / \$36,750 (8.2%)	4 / 44 (9.1%)
2011 October Quarterly	\$7,625 / \$36,525 (20.8%)	11 / 69 (15.9%)
2011 Year End	\$7,350 / \$45,875 (16.0%)	9 / 91 (9.8%)
2012 April Quarterly	\$6,300 / \$75,129 (8.3%)	12 / 185 (6.5%)

- 3
- 4 The Act requires candidate committees to identify persons who make contributions that,
- 5 when aggregated, exceed \$200 for the election cycle. 2 U.S.C. § 434(b)(3)(A). The Act defines

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1 "identification" to include, for individuals, their name, address, occupation, and name of
2 employer. 2 U.S.C. § 431(13). If the committee does not disclose this information, the
3 committee shall nonetheless be considered in compliance with the Act if it submits evidence that
4 it used "best efforts" to "obtain, maintain, and submit this information." 2 U.S.C. § 432(i);
5 11 C.F.R. § 104.7(a). In order to demonstrate "best efforts," written solicitations for
6 contributions must include a clear request for the required contributor information.
7 11 C.F.R. § 104.7(b). In addition, the solicitation must include an accurate statement of Federal
8 law regarding the collection and reporting of individual contributor identification. *Id.* In the
9 event the contributor does not provide this information, the committee treasurer must make at
10 least one effort to obtain the information no later than 30 days after the receipt of the
11 contribution. 11 C.F.R. § 104.7(b)(2). The request may not include new material on any other
12 subject and cannot include an additional solicitation. *Id.* The request must clearly ask for the
13 missing information and, if in writing, it must be accompanied by a pre-addressed return post
14 card or envelope. *Id.*

15 The Complaint alleges that the Committee did not use "best efforts" because the
16 Committee failed to request the employer and occupation information in multiple solicitations:
17 (1) a September 5, 2010 fundraising letter sent to the Access to Energy subscribers, attached to
18 the Complaint as Attachment G; (2) the March and May 2010 editions of Access to Energy,
19 attached to the Complaint as Attachments A and B; and (3) nine e-mails sent to the Robinson
20 Curriculum e-mail list between July 8 and October 28, 2010, attached to the Complaint as
21 Attachment H. Respondents assert they used "best efforts" to attempt to obtain and report the
22 occupation and employer information of their contributors. Resp. at 13.

As we explain below, although the Committee has not disclosed employer and occupation information for some contributors, the Committee's Response to the Complaint indicates that, in subsequent solicitations, it has been taking actions consistent with "best efforts," such as requesting more detailed contributor information in its solicitation materials and sending a follow-up request for missing information within 30 days. *See Resp.* at 13-14.

1. The September 5, 2010 Fundraising Letter

On September 5, 2010, Robinson sent a letter ("September 5, 2010 Letter") to his Access to Energy newsletter subscribers that solicited contributions. *See Compl.*, Attach. G (copy of September 5, 2010 Letter). According to the Complaint, this letter "did not contain an accurate statement of federal law." *Compl.* at 7. Respondents contend that they "earnestly sought to obtain the requisite information from contributors" and cite the September 5, 2010 Letter itself, which included a card that requested contributor occupation and employer information, as evidence of their best efforts. *See Resp.* at 13; *Compl.*, Attach. G (letter and card); *Resp.*, Exh. 7 (more legible copy of card). Additionally, Respondents submitted two blank form follow-up letters that request employment information from contributors and represented that these letters were sent to contributors who failed to supply occupation and employer information. *See Resp.* at 14; *id.*, Exh. 8 (also including a November 8, 2010 letter from the Committee to RAD explaining its use of these letters).⁸

Robinson's September 5, 2010 Letter included a request for the required contributor information in accordance with 11 C.F.R. § 104.7(b). A card included with the letter asked contributors to state their name, address, occupation, and employer, with a note stating that

⁸ The Complaint notes that it was able to identify the employer and occupation of 11 contributors by researching those contributors on the FEC website or by using Google. *Compl.* at 6, n. 5; *id.*, Attach. M. Respondents reject, as beyond "best efforts," the suggestion that the Committee should have obtained the missing information by "investigating" its contributors. *Resp.* at 14-15.

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1 occupation and employer information was "For donations of \$200 or more. If none, please write
2 'none.'" See Compl., Attach. G; Resp., Exh. 7. Although the letter did not include the required
3 statement of federal law regarding the collection and reporting of contributor information,
4 see 11 C.F.R. § 104.7(b), both of the sample follow-up letters do. See Compl., Attach. G; Resp.,
5 Exh. 7-8. The Response did not include a representation as to how soon the Committee sent its
6 follow-up letters after it received a contribution without the required information, but the
7 Committee previously stated in a letter to RAD, attached as Exhibit 8 to the Response, that its
8 procedure is to send a follow-up letter to contributors within 30 days of receiving a contribution
9 without the required information.

10 In accordance with 11 C.F.R. § 104.7(b)(2), the sample follow-up letters do not include
11 new material on any other subject, do not include an additional solicitation, clearly ask for the
12 missing information, and were assertedly accompanied by pre-addressed return envelopes. Resp.
13 at 14. Accordingly, with respect to contributions received as a result of the September 5, 2010,
14 solicitation letter, the available information suggests that Respondents satisfied some, but not all,
15 of the elements of "best efforts."

16 2. The March and May 2010 Access to Energy Newsletters

17 According to the Complaint, the March and May 2010 Access to Energy newsletters
18 solicit campaign funds but do not contain "an accurate statement of federal law." Compl. at 6.
19 Respondents do not respond to this allegation.

20 The March 2010 newsletter, the first page of which is attached to the Complaint as
21 Attachment A, solicits contributions and asks that they be made by credit card on the
22 Committee's website or by mailing contribution checks to either of two addresses. No text on
23 the page attached to the Complaint requests employment information. We do not have the text

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1 of the Committee's website, where contributions may have been made, as it existed when the
2 solicitations were made. We note, however, that the Committee's website *currently* includes an
3 accurate statement of law: "Federal Election Law requires political committees to report the
4 name, mailing address, occupation and name of employer for each individual whose
5 contributions aggregate in excess of \$200 per election cycle." The Committee's website also
6 includes a request for the contributor's occupation and employer.
7 See <https://rfc2010.wnfoo.com/forms/m7x3p9/>.

8 The May 2010 newsletter solicits funds and indicates that it was mailed with a separate
9 "specific appeal for campaign funds," see Compl., Attach. B at 3, but no such appeal was
10 included in the copy of the newsletter attached to the Complaint. Accordingly, we cannot be
11 certain whether that portion of the solicitation requested that contributors provide employment
12 information.

13 Accordingly, Respondents do not appear to have met all of the elements of "best efforts."

14 3. Nine E-mails to the Access to Energy Subscribers

15 The Committee sent several e-mails to the Access to Energy subscribers, attached to the
16 Complaint at Attachment H, which included solicitations for contributions and directed
17 contributors to make their donations through the Committee's website. No copies of the
18 contribution page of the Committee's website, as it appeared at the time of the e-mailed
19 solicitations, were included with the Complaint, and Respondents did not address this allegation
20 in their Response. Thus, we do not know whether contributors were asked to provide
21 employment information when making their contributions on the Committee's website.

4. Conclusion

Although in some instances it appears that the Committee's solicitations did not satisfy all of the elements of "best efforts," the Committee now appears to be taking actions consistent with "best efforts" and its disclosure of contributor employer and occupation information has improved. In MUR 6031 (Hagan), the Commission dismissed the allegation that the committee failed to disclose contributor employer and occupation because the Committee demonstrated significant improvement in its efforts to obtain and disclose that information. In MUR 6387 (Teri Davis Newman for Congress), the Committee lacked occupation and employer information for approximately \$47,000 in contributions, nearly all of its contributions other than those from the candidate. The Office of the General Counsel ("OGC") recommended a statutory penalty for this violation, but the Commission instead referred the matter to the Alternative Dispute Resolution Office, taking into account circumstances, including that the candidate was a first-time candidate. We note that, like MUR 6387 (Teri Davis Newman for Congress), this was the Committee's first campaign.

Further, like MUR 6031 (Hagan), the Committee's disclosures improved throughout the election cycle. The Committee's amended 2010 Post-General Report, filed on March 17, 2011, identified 401 contributors, 38 of which lacked employer and occupation information, representing approximately 9.5% of the total number of contributors. The value of the contributions donated by these 38 individuals was \$18,101, which represents 12.1% of the total. Accordingly, the Committee's 2010 Post General Report demonstrates a significant improvement from the Committee's 2010 Pre-Primary Report, in which 48% of the contributors identified in the report lacked employer and occupation information, and those individuals contributed 43% of the contributions. Similarly, in the Committee's most recent report,

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1 the 2012 April Quarterly Report, there were only twelve contributors out of 185, or 6.5%,
2 without employer and occupation information and those persons contributed \$6,300, or 8.3% of
3 the total itemized contributions identified in that report. Thus, the Committee demonstrated
4 marked improvement relative to its 2010 Pre-Primary Report.

5 Although there is some information about the Committee's best efforts that could be
6 further developed, we believe that an investigation would not be a prudent use of the
7 Commission's resources. Consequently, we recommend that the Commission exercise its
8 prosecutorial discretion and dismiss the allegations that Respondents failed to disclose employer
9 and occupation information, *see Heckler v. Chaney*, 470 U.S. 821 (1985), and caution
10 Respondents.

11 **F. Alleged Failure to Include Disclaimers**

12 The Complaint alleges that Respondents Robinson, the Committee, Oregon Institute,
13 Robinson Curriculum, and Althouse Press failed to include the required disclaimers on several
14 communications in violation of 2 U.S.C. § 441d and 11 C.F.R. § 110.11. Compl. at 7.
15 Specifically, the Complaint asserts that disclaimers were missing from nine e-mails that were
16 sent to the Robinson Curriculum e-mail list and from the March and May 2010 editions of the
17 Access to Energy newsletter, which expressly advocated Robinson's election and solicited
18 contributions. *See* Compl., Attach. A, B, H.

19 **1. Nine E-mails To the Robinson Curriculum E-mail List**

20 According to the Complaint, the Robinson campaign sent nine e-mails to the Robinson
21 Curriculum e-mail list, all but one of which were sent from the e-mail address of the candidate's
22 son, Robinson's campaign manager and the Committee's treasurer. Compl. at 7; Resp. at 5. The
23 Complaint presumed that there were more than 500 recipients of these e-mails based on a

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1 statement attributed to Robinson that more than 60,000 students used his curriculum. Compl.
2 at 7. The Complaint alleges that none of the e-mails contained a disclaimer and, therefore, that
3 Robinson, Althouse Press, and the Oregon Institute violated the Act.⁹ *Id.* Respondents do not
4 contest that the e-mails are subject to the disclaimer requirements, but assert that no disclaimer
5 was required because it was clear to the public who was responsible for these communications.
6 Resp. at 16-17.

7 Whenever any person makes a disbursement to finance a communication that solicits any
8 contribution through any mailing, the communication must contain a disclaimer. 2 U.S.C.
9 § 441d(a). If the communication is paid for and authorized by a candidate, an authorized
10 political committee, or its agents, then it must state that it has been paid for by such authorized
11 political committee. 2 U.S.C. § 441d(a)(1). Political committees that send more
12 than 500 substantially similar communications by e-mail must include disclaimers in the
13 communications. 11 C.F.R. § 110.11(a)(1). Disclaimers must also be presented in a clear and
14 conspicuous manner, to give the reader adequate notice of the identity of the person or
15 committee that paid for and authorized the communication. 11 C.F.R. § 110.11(c)(1). Among
16 other things, disclaimers in written materials must be contained in a printed box set apart from
17 the other contents of the communication. 11 C.F.R. § 110.11(c)(2)(ii). Disclaimers need not
18 appear on the front or cover page of the communication. 11 C.F.R. § 110.11(c)(iv).

19 In MUR 6270 (Rand Paul Committee), the Commission exercised its prosecutorial
20 discretion to dismiss an allegation that the Rand Paul Committee failed to include a disclaimer
21 on certain communications, including an e-mail signed by its political director. *See* MUR 6270
22 (Rand Paul) Factual and Legal Analysis at 10-12. The Commission concluded that there was

⁹ Because the Complaint alleges that Robinson's campaign sent the e-mails, we treat this as an allegation that the Committee violated the Act.

1 likely a *de-minimis* cost associated with the e-mail and there was sufficient information to
2 identify the Committee payor. *Id.* Additionally, the Commission dismissed, under the
3 Commission's Enforcement Priority System, similar allegations in two other matters in which
4 the Committee included some identifying information. *See* MUR 6278 (Segers) (Commission
5 dismissed allegations that campaign flyers lacked the requisite disclaimer where the campaign
6 committee's contact information was provided); MUR 6103 (Singh) (Commission dismissed the
7 allegation that mailers did not include the requisite disclaimer where some information
8 identifying the campaign committee was included).

9 Although the e-mails, attached to the Complaint as Exhibit H, did not comply with the
10 disclaimer requirements, they contained sufficient information for the recipients to identify the e-
11 mails as authorized e-mails and to identify Robinson's campaign as the payor. Eight of the nine
12 e-mails were sent by the Committee's treasurer, Noah Robinson, from his Committee e-mail
13 address, and the ninth was sent by a person identifying himself as a "Robinson Campaign
14 Volunteer;" the e-mails rallied public support for Robinson's campaign; the e-mails directed
15 recipients to the campaign website for more information, referring to it as "our" website; and the
16 e-mails stated that "our" mailing address was a P.O. box for "Art Robinson for Congress."
17 Resp. at 16-17.¹⁰ The address for recipients to contact to unsubscribe from the e-mails was the
18 Committee's e-mail address.

19 Therefore, we recommend that the Commission exercise its prosecutorial discretion and
20 dismiss the allegations that the Committee, Althouse Press, and the Oregon Institute

¹⁰ Respondents contend that an unspecified technical error caused the omission of the disclaimer on its e-mails and that "the Commission does not take action against respondents who have failed to satisfy disclaimer requirement [*sic*] because a technical error was made in disseminating the communication or the disclaimer was missing in whole or in part." Resp. at 16; *id.*, n. 4. Without further information about the purported technical error, it is difficult to evaluate this assertion.

violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 with respect to the e-mails, *see Heckler v. Chaney*, 470 U.S. 821 (1985), and caution Respondents.

2. March and May 2010 Access to Energy Newsletters

The Complaint also asserts that the March and May 2010 editions of the Access to Energy newsletter expressly advocated Robinson's election and solicited contributions, but lacked disclaimers. *See* Compl. at 7. Respondents contend that the March 2010 newsletter contained sufficient identifying information to prevent the public from being misled as to who authorized and paid for the solicitation. Resp. at 17. The newsletter indicated that: (a) Robinson was the author, publisher, and editor; (b) Robinson identified himself as running for Congress; (c) Robinson promoted his campaign in the newsletter; (d) Robinson requested that any fundraising checks be addressed to "Art Robinson for Congress"; and (e) the communication in question was a newsletter sent to subscribers who were familiar with the nature of the newsletter. *Id.*

Respondents also contend that the May 2010 newsletter "conspicuously stated that Dr. Robinson paid the entire cost of the issues that solicited contributions" to the Committee on the third page under the heading "Federal Election Laws." Resp. at 15. Indeed, the third page of the newsletter includes a section about federal election laws and the phrase "Paid for by Art Robinson by Congress" in a box in the middle of the first column of text. *See* Compl., Attach. B at 3. The accompanying text of the newsletter indicates that the boxed disclaimer is an example of a disclaimer that must appear on campaign materials, but that "We have been legally advised that this disclaimer need not appear on this newsletter, since it appears on the specific appeal for help that is enclosed with it." *Id.* Neither the Complaint nor the Response include the "specific appeal for help" that, according to the text of the May 2010 newsletter, contained a disclaimer.

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1 Even though we do not have a copy of the "specific appeal for help," we note that the newsletter
2 states that Arthur B. Robinson paid for the cost of the newsletter and reported the costs as an in-
3 kind contribution to the Committee. *Id.*

4 In short, although the March 2010 newsletter did not contain the disclaimer required by
5 the Act and the Commission's regulations, there was sufficient information in the newsletters to
6 identify the Committee payor, and is similar to the MURs, identified above, in which the
7 Commission dismissed the allegations. Therefore, we recommend that the Commission exercise
8 its prosecutorial discretion and dismiss the allegations that the Committee, Althouse Press, and
9 the Oregon Institute violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 with respect to the March
10 and May 2010 Access to Energy newsletters, *see Heckler v. Chaney*, 470 U.S. 821 (1985), and
11 caution Respondents regarding the March 2010 newsletter.

12 III. RECOMMENDATIONS

- 13 1. Find no reason to believe the allegations that Art Robinson for Congress and
14 Noah Robinson, in his official capacity as treasurer, knowingly accepted
15 excessive contributions in violation of 2 U.S.C. § 441a(f).
16
2. Find no reason to believe that Art Robinson for Congress and Noah Robinson, in
his official capacity as treasurer, knowingly accepted corporate contributions in
violation of 2 U.S.C. § 441b.
3. Find no reason to believe that Althouse Press, the Oregon Institute of Science and
Medicine, or the Robinson Curriculum made corporate contributions in violation
of 2 U.S.C. § 441b and 11 C.F.R. § 114.2(f).
4. Find no reason to believe that Art Robinson for Congress and Noah Robinson, in
his official capacity as treasurer, failed to disclose earmarked contributions in
violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).
5. Find no reason to believe that Althouse Press or Access to Energy failed to
disclose earmarked contributions in violation of 2 U.S.C. § 441a(a)(8) and
11 C.F.R. § 110.6(c).
6. Dismiss the allegations that Art Robinson for Congress and Noah Robinson, in his
official capacity as treasurer, failed to disclose contributor employer and

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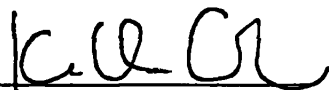
occupation information in violation of 2 U.S.C. § 434(b), and caution Respondents.


7. Dismiss the allegations that Art Robinson for Congress and Noah Robinson, in his official capacity as treasurer, Arthur B. Robinson, Althouse Press, and the Oregon Institute of Science and Medicine failed to include disclaimers in violation of 2 U.S.C. § 441d and 11 C.F.R. § 110.11, and caution Respondents.
8. Approve the attached Factual and Legal Analysis.
9. Approve the appropriate letters, including a letter cautioning Respondents.
10. Close the file.

Anthony Herman
General Counsel

6-29-12
Date

BY:


Kathleen M. Guith
Deputy Associate General Counsel


Mark Shonkwiler
Assistant General Counsel


Michael A. Columbo
Attorney

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